



State Statutes Series 2004

Children and Domestic Violence

Defining Domestic Violence

In recent years, increased attention has been focused on children who may be impacted by violence in the home, either as direct victims or as witnesses to domestic violence. Although mandatory reporting laws have been the primary means for protecting abused and neglected children, many States now provide additional protection for children in their domestic violence laws.

Domestic violence can be defined generally as “a pattern of assaultive and/or coercive behaviors, including physical, sexual, and emotional abuse, as well as economic coercion, that adults use against their intimate partners to gain power and control in that relationship.”¹ All jurisdictions in the United States have laws that define domestic or family violence. In some States, domestic violence is defined broadly with terms such as “abuse,” “harassment,” “threats of harm,” or “intimidation.” In other States, the definition can include more specific behaviors such as burglary, criminal trespass, arson, sexual assault, or violation of a protective order. The persons protected by domestic violence laws can include spouses or former spouses, persons who live or have lived together or have a dating relationship, or other family or household members.

Approximately² 40 States,³ the District of Columbia, and the U.S. Territories Guam, Northern Mariana Islands, and Puerto Rico include children as a class of protected persons in some way within their definitions of domestic violence. Most commonly, a child who is a member of the household or a child of either adult in the relationship is protected by the law. Five States (Arizona, Hawaii, Ohio, Utah, and Vermont) include child abuse in their definition of domestic violence. Four States (Arizona, North Carolina, Virginia, and Washington) specifically include grandchildren as protected persons, and three States (Georgia, Louisiana, and Texas) include foster children.

¹Susan Schecter and Jeffrey Edleson, *Effective Intervention in Domestic Violence and Child Maltreatment Cases: Guidelines for Policy and Practice* (Reno, NV: National Council of Juvenile and Family Court Judges, 1999), 9.

²The word *approximately* is used to stress the fact that the States frequently amend their laws, so this information is current only through March 2004.

³Colorado, Iowa, Kansas, Massachusetts, New Hampshire, New Jersey, Oregon, South Carolina, Wisconsin, and Wyoming do not currently include children in their definitions of domestic violence.



Exceptions

A small number of States provide exceptions for certain acts in their definitions of domestic violence. The most common exception, in seven States⁴ and Guam, is for acts of self-defense. Guam also exempts defense of others, and Delaware and Louisiana exempt acts committed in defense of a child. Three States (Georgia, Illinois, and Maryland) provide an exception for reasonable acts of discipline of a child. Verbal abuse or argument is exempted by Connecticut.

Child Witnesses to Domestic Violence

Research shows that even when children are not the direct targets of violence in the home, they can be harmed by witnessing the occurrence of such violence.⁵ The witnessing of domestic violence can be auditory, visual, or inferred, including cases in which the child witnesses the aftermath of violence, such as cuts, bruises, or broken limbs. Children who witness domestic violence can suffer severe emotional and developmental difficulties similar to children who are the direct victims of abuse.⁶ The legal system is beginning to recognize the need to protect and care for these children. Approximately 20 States⁷ and Puerto Rico have enacted legislation that specifically includes children who witness domestic violence as a class of persons in need of legal protection.

A child is a witness to domestic violence when an act that is defined as domestic violence is committed in the presence of or witnessed by the child. In some States, the definition goes no further than that. In other States,⁸ the definition is more specific, stating that witnessing by a child occurs when the offender commits the violence “in the physical presence of the child or knowing that the child is present and can see or hear” the act of violence. Washington uses the language “within sight or sound of victim’s or offender’s children.” Ohio law states that witnessing occurs when the domestic violence is committed “in the vicinity of a child,” meaning within 30 feet or within the same residential unit occupied by the child, regardless of whether the child is actually present or can actually see the commission of the offense. Minnesota includes chronic and severe use of alcohol or a controlled substance by a parent as part of the definition of “exposed to domestic violence.”

Legal Responses

In many States, a conviction of domestic violence committed in the presence of a child may result in harsher penalties. Thus, when the presence of a child during domestic violence is considered to be “aggravating circumstances,” sentencing guidelines in most States mandate that such aggravating circumstances result in a harsher criminal penalty, such as a longer jail or prison term or an increased fine. Approximately eight States⁹ include committing an act of domestic violence in the presence

⁴Delaware, Indiana, Louisiana, Michigan, North Carolina, North Dakota, and Texas provide this exception.

⁵For additional information about the impact of domestic violence on children, see the Clearinghouse publication, *Children and Domestic Violence: A Bulletin for Professionals*, at <http://nccanch.acf.hhs.gov/pubs/factsheets/domesticviolence.cfm>.

⁶Schechter and Edelson, p. 10.

⁷Alaska, Arizona, Arkansas, California, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Minnesota, Mississippi, Montana, North Carolina, Ohio, Oklahoma, Oregon, Utah, and Washington.

⁸Alaska, Arizona, Arkansas, California, Florida, Georgia, Hawaii, Idaho, Illinois, Mississippi, Oklahoma, Oregon, and Utah.

⁹Alaska, Arizona, California, Hawaii, Mississippi, Montana, Ohio, and Washington.

of a child as an aggravating circumstance. An additional seven States¹⁰ and Puerto Rico provide for enhanced penalties when domestic violence is committed in the presence of a child.

Illinois and Nevada both require perpetrators of domestic violence to pay for any counseling that a child victim may require. In Delaware, committing domestic violence in the presence of a child is considered an act of child endangerment. In Georgia, it is considered cruelty to children. Indiana requires a noncustodial parent who is convicted of domestic violence in the presence of a child to have visitation with the child supervised for at least 1 year and not more than 2 years following the act of domestic violence.

This publication is a product of the State Statutes Series prepared by the National Clearinghouse on Child Abuse and Neglect Information. While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of a State's code as well as agency regulations, case law, and informal practices and procedures.

Electronic copies of this publication may be downloaded from the Clearinghouse website at <http://nccanch.acf.hhs.gov/general/legal/statutes/domviol.cfm>.

- To find statute information for a particular State, go to <http://nccanch.acf.hhs.gov/general/legal/statutes/search> and select the specific State and topic.
- To find information on all the States and Territories, view the complete PDF at <http://nccanch.acf.hhs.gov/general/legal/statutes/domviolall.pdf> or call the Clearinghouse at (800) 394-3366 or (703) 385-7565 to order a copy.

¹⁰Arkansas, Florida, Idaho (where penalties are doubled), North Carolina, Oklahoma, Oregon, and Utah.